

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BAUDELIO GARCIA-JIMENEZ,

Petitioner,

v.

ICE FIELD OFFICE DIRECTOR,

Respondent.

NO. C15-820-RSL-JPD

REPORT AND
RECOMMENDATION

INTRODUCTION

Petitioner Baudelio Garcia-Jimenez, proceeding *pro se*, filed a habeas petition pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by U.S. Immigration and Customs Enforcement (“ICE”) and seeking either release from immigration detention or a bond hearing.¹ Dkt. 4. Petitioner also filed a motion for humanitarian parole, which presents an alternative legal theory for his release due to medical issues. Dkt. 11.

Respondent has filed a motion to dismiss, arguing that the habeas petition should be denied because petitioner is lawfully detained pursuant to 8 U.S.C. § 1226(a) and has already received two individualized bond redetermination hearings before an Immigration Judge (“IJ”).

¹ Petitioner has a second habeas petition pending. *See Garcia-Jimenez v. ICE*, No. 15-821-RSL-BAT (W.D. Wash.).

1 Dkt. 14. Respondent also filed a response opposing petitioner's motion for humanitarian
2 parole. Dkt. 16. Petitioner did not file a response to the motion to dismiss or a reply in support
3 of his motion for humanitarian parole.

4 Having considered the submissions of the parties, the balance of the record, and the
5 governing law, the Court recommends that petitioner's motion for humanitarian parole be
6 DENIED, respondent's motion to dismiss be GRANTED, petitioner's habeas petition be
7 DENIED, and this action be DISMISSED with prejudice.

8 BACKGROUND

9 Petitioner, a native and citizen of Mexico, entered the United States at or near San
10 Ysidro, California, on an unknown date without being admitted or paroled. *See* Dkt. 15-1 at 3.
11 In October 1989, his status was adjusted to that of Lawful Permanent Resident. *Id.* In October
12 2008, petitioner was convicted of "Lewd Acts with a Child under 14 Years" and was sentenced
13 to eight years in prison. *Id.* at 3, 5-18.

14 ICE encountered petitioner in May 2014 at the California Substance Abuse Treatment
15 Facility in Corcoran, California, and arranged for him to be transferred directly from state to
16 ICE custody upon his release. *Id.* at 3. On or about July 14, 2014, petitioner was transferred to
17 ICE custody. *See* Dkt. 15-1 at 19; Dkt. 15-2 at 3, 6. He was served with a Notice to Appear,
18 charging him with removability under 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an
19 aggravated felony under 8 U.S.C. § 1101(a)(43)(A), a law relating to murder, rape, or sexual
20 abuse of a minor, and § 1101(a)(43)(F), a crime of violence. Dkt. 15-2 at 1-4. ICE also made
21 the initial custody determination to detain petitioner. Dkt. 15-2 at 6.

22 Petitioner requested a bond redetermination hearing before an IJ, and received such a
23 hearing on August 26, 2014. Dkt. 15-2 at 10, 12. The IJ denied bond, finding that petitioner
24

1 presents a danger to the community and a flight risk. *Id.* at 12. Petitioner did not appeal the
2 adverse bond determination to the Board of Immigration Appeals (“BIA”).

3 Petitioner requested a second bond redetermination hearing, and received that hearing
4 on September 26, 2014. Dkt. 15-2 at 14; Dkt. 15-3 at 3. The IJ denied bond, finding that
5 petitioner presented no new facts and that he remained a danger to the community based on his
6 2008 conviction. Dkt. 15-3 at 3. Again, petitioner did not appeal to the BIA.

7 Petitioner is scheduled for a merits and bond hearing on August 31, 2015. Dkt. 18-1.

8 DISCUSSION

9 A. Petitioner’s motion for humanitarian parole

10 Petitioner asks the Court to release him on humanitarian parole because his continued
11 detention is not in the public interest and he has a serious medical condition that needs
12 attention. Dkt. 11 at 1, 3. Petitioner’s request is based on 8 U.S.C. § 1182(d)(5)(A), which
13 provides in relevant part: “The Attorney General may . . . in his discretion parole into the
14 United States temporarily under such conditions as he may prescribe only on a case-by-case
15 basis for urgent humanitarian reasons or significant public benefit any alien applying for
16 admission to the United States” *Id.*; *see also* 8 C.F.R. § 212.5. The applicable statutory
17 and regulatory provisions vest full discretion for humanitarian parole in the Attorney General,
18 the Secretary of the Department of Homeland Security (“DHS”), and various DHS officials.
19 *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a). Therefore, the Court does not have
20 jurisdiction to grant petitioner the parole he seeks. *See United States v. Leal-Del Carmen*, 697
21 F.3d 964, 975 (9th Cir. 2012) (“[T]he federal government had exclusive authority to parole [an
22 alien lacking a lawful immigration status] into the country”) (citing 8 U.S.C. §
23 1182(d)(5)(A)); *Hassan v. Chertoff*, 593 F.3d 785, 789-90 (9th Cir. 2008) (whether to grant or
24 revoke parole is decided by the Attorney General or certain DHS officials); *Acosta v. United*

1 *States*, No. C14-420 RSM, 2014 WL 2216105, at *4 n.1 (W.D. Wash. May 29, 2014) (court
 2 lacked authority to grant parole under 8 U.S.C. § 1182(d)(5)(A)); *United States v. Li*, No. CV-
 3 12-482-PHX-DGC, 2013 WL 6729895, at *2 (D. Ariz. Dec. 19, 2013) (there is no authority
 4 under which the court could compel the Attorney General to grant humanitarian parole).
 5 Petitioner's motion should be denied.

6 B. Respondent's motion to dismiss

7 Title 8 U.S.C. § 1226 provides the framework for the arrest, detention, and release of
 8 aliens, such as petitioner, who are in removal proceedings. 8 U.S.C. § 1226; *see also Demore*
 9 *v. Kim*, 538 U.S. 510, 530 (2003) ("Detention during removal proceedings is a constitutionally
 10 permissible part of that process."). Section 1226(a) grants the Attorney General discretionary
 11 authority to determine whether an alien should be detained, released on bond, or released on
 12 conditional parole pending the completion of removal proceedings, unless the alien falls within
 13 one of the categories of criminal aliens described in § 1226(c), for whom detention is
 14 mandatory. 8 U.S.C. § 1226.

15 When an alien is arrested and taken into immigration custody pursuant to § 1226(a),
 16 ICE makes an initial custody determination, including the setting of bond. *See* 8 C.F.R. §
 17 236.1. After the initial custody determination, the alien may request a bond redetermination by
 18 an IJ. *Id.* If the IJ denies bond, the alien may appeal to the BIA. 8 C.F.R. § 236.1. Once an IJ
 19 has made an initial bond redetermination, an alien's request for a subsequent bond
 20 redetermination must be made in writing and must show that the alien's circumstances have
 21 changed materially since the prior bond redetermination. 8 C.F.R. § 1003.19(e).

22 At the bond hearing, the burden is on the detainee to show to the satisfaction of the IJ
 23 that he warrants release on bond. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). In
 24 making a bond decision under § 1226(a), an IJ "must consider whether an alien who seeks a

1 change in custody status is a threat to national security, a danger to the community at large,
2 likely to abscond, or otherwise a poor bail risk.” *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA
3 2006) (citing *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976)). An IJ may also consider any
4 number of discretionary factors, including: (1) whether the alien has a fixed address in the
5 United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties
6 in the United States, and whether they may entitle the alien to reside permanently in the United
7 States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in
8 court; (6) the alien’s criminal record, including the extensiveness of criminal activity, the
9 recency of such activity, and the seriousness of the offenses; (7) the alien’s history of
10 immigration violations; (8) any attempts by the alien to flee persecution or otherwise escape
11 authorities, and (9) the alien’s manner of entry to the United States. *Id.*

12 Because petitioner’s removal proceedings are ongoing, his continued detention is
13 governed by § 1226(a). As required by the regulations, petitioner received a bond hearing
14 before an IJ. He also requested and received a second bond hearing where the IJ found no
15 material change in his circumstances from his initial hearing and thus held him at no bond
16 based on his felony conviction. Petitioner fails to establish any constitutional or legal error in
17 his bond hearings. To the extent he seeks to challenge the IJ’s discretionary judgment, the
18 Court is without jurisdiction to consider his claims. *See* 8 U.S.C. § 1226(e); *Prieto-Romero v.*
19 *Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008) (“alien may appeal the IJ’s bond decision to the
20 BIA, *see* 8 C.F.R. § 236.1(d), but discretionary decisions granting or denying bond are not
21 subject to judicial review, *see* § 1226(e)”). At this point in his removal proceedings, petitioner
22 has received all of the benefits of due process to which he is entitled. His habeas petition
23 should be denied.

CONCLUSION

For the foregoing reasons, the Court recommends that petitioner's motion for humanitarian parole, Dkt. 11, be DENIED; respondent's motion to dismiss, Dkt. 14, be GRANTED; petitioner's habeas petition, Dkt. 4, be DENIED; and this action be DISMISSED with prejudice. A proposed order accompanies this Report and Recommendation.

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit by no later than **September 17, 2015**. Failure to file objections within the specified time may affect your right to appeal. Objections should be noted for consideration on the District Judge's motion calendar for the third Friday after they are filed. Responses to objections may be filed within **fourteen (14)** days after service of objections. If no timely objections are filed, the matter will be ready for consideration by the District Judge on **September 18, 2015**.

This Report and Recommendation is not an appealable order. Thus, a notice of appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the assigned District Judge acts on this Report and Recommendation.

DATED this 27th day of August, 2015.



JAMES P. DONOHUE
Chief United States Magistrate Judge